2006

State of Utah v. Maria Joyce Jacobs : Brief of Appellant

Utah Court of Appeals

David E. Yocom; District Attorney for Salt Lake County; Gregory N. Ferbache; Prosecutor.
Maria Joyce Jacobs; Appellant Pro Se.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

Case No. 20060711 – CA

MARIA JOYCE JACOBS,

Defendant/Appellant.

OPENING BRIEF OF APPELLANT

This is an appeal from a conviction for interference with arresting officer in violation of Utah Code Annotated Section 76-8-305, a class B misdemeanor, entered in the Third District Court in and for Salt Lake County, State of Utah, and Stephen L. Henriod, Judge, presiding.

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ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

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STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
	:	Case No. 20060711 – CA
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JURISDICTIONAL STATEMENT

Jurisdiction is conferred on this Court, pursuant to Utah Code Annotated Section 78-2a-3(2)(e) (1992), and Utah Rules of Criminal Procedures 26(2)(a), whereby a defendant in a district court criminal action may take an appeal to the Court of Appeals from a final judgment and conviction for any crime other than a first degree or capital felony.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

I. The plain and specific language of UCA Section 76-8-305 requires a detention under the condition of arrest or arrest to be lawful or authorized by law and within constitutional boundaries. When an officer effects an arrest for an alleged offense

committed outside of his presence, the Court evaluates the legality of the arrest objectively, See State v. Ayala, 762 P.2d 1107, 1111 (Utah Ct. App. 1998), State v. Valenzuela, 37 P.3d 260 (Utah App.) , and in evaluating the reasonableness of the seizure the Court affords little discretion to the district court because there must be statewide standards that guide law enforcement and prosecutorial officials, State v. Hechtle, 89 P.3d 185 (Utah App. 2004).

II. The State must prove the elements of the crime charged in the information, and the instructions to the jury must contain the material constituents of the elements needed to find necessary for conviction, based on the relevant legal criteria provided by the trial judge. The Court reviews the trial courts instructions to the jury for correctness, affording no deference, See Ames v. Maas, 846 P.2d 468, 471 (Utah App. 1993). The complete absence of an element instruction of a crime charged is an error the Court reviews to avoid manifest injustice, See Utah Rules of Criminal Procedures 19(c) and State v. Jones, 823 P.2d 1059 (Utah 1991).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent parts of the following statutes and constitutional provision are contained in the text of this brief or in the Addendum:

Utah Code Ann. Section 76-8-305 Utah Code Ann. Section 78-21-3

Utah Code Ann. Section 77-7-6 Utah Code Ann. Section 77-7-15

Utah Code Ann. Section 76-9-701(1) Utah Code Ann. Section 77-7-2

Utah Constitution Article I Section 14

United States Constitution Amendment IV

United States Constitution Amendment XIIII

STATEMENT OF THE CASE

The state charged the appellant with public intoxication, criminal mischief, disturbance of the peace, and interference with the arresting officer. Due to impecuniosity the appellant was assigned a Public Defender. At the time of pretrial the appellant had been transferred between five public defenders. On March 14, 2006 the charges were tried in a jury trial and the appellant was found not guilty of all charges with the exception of interference in the detention or arrest.

FACTS

This case arises out of the detention and arrest of the appellant based on the allegations of her next door neighbor that the appellant was disturbing the peace and was damaging her property. The district court entered no findings of facts.

BACKROUND

The following general facts were established at trial: The appellant had been renting a duplex apartment that included a carport space and had been planning on moving sometime in the future. Her next door neighbor made plans to move in to appellant's larger unit, and prematurely purchased some furniture which the appellant agreed to let her neighbor store temporarily in back of her carport until she could make other arrangements. Instead, and without authority, her neighbor subsequently abrogated the appellant's entire carport space in the appellant's absence. The night of her arrest the appellant returned late to her residence to discover her carport barricaded with her patio furniture and stacked full of the complainants property, a note on her door from her neighbor that her "stuff" had to come in to the appellants unit, and her dog, a small beagle, missing from her premises. After a lengthy search of the area the appellant could hear her dog whimpering from under the objects haphazardly stacked up under her carport space.

When she called her small dog repeatedly, her dog did not come out. She therefore started removing the barricade and pushing some of the objects aside. As she did, two of her plastic patio chairs tumbled over and her neighbor came outside and threatened the appellant that she was calling the cops to have her arrested. The appellant summoned the landlord living nearby, for assistance, and then entered her car to move her car behind her

carport for light. The appellant admitted at trial that due to the rain and cold she had interrupted her search for her dog and had consumed a cup of hot tea with a modest amount of alcohol to help her warm up.

RELEVANT FACTS TO THE CHARGE OF INTERFERANCE

The facts relevant to a determination whether the appellant violated Section 76-8-305 in interfering in a lawful detention or arrest are basically undisputed. Deputy Barnes of the Salt Lake County Sheriffs Department responded to a call to dispatch from appellants neighbor, hereinafter referred to as the complainant, that the appellant was intoxicated, and throwing her brand new furniture she had stored under the appellants carport space around the yard (testimony of Deputy Barnes, page 2 lines 24-25, page 3 line 1, page 11 line 25, page 12 lines 1-12). Deputy Barnes arrived in her marked patrol car and in uniform (page 2 lines 19-23) and observed the appellant enter her car in back of the property. She observed the complainant by her front door calling out to stop the appellant as she was drunk and attempting to leave (page 3 lines 24-25). Deputy Barnes had not observed the appellant commit any offense (page 20 lines 13-15) or throw any furniture (page 19 lines 6-8). She immediately approached the appellant in her car and without asking any questions ordered her to exit the vehicle (page 12 lines 20-25, page 13 lines 1-10).

The appellant testified at trial that she did not hear the officers' order as she was paying attention to the complainant near her door jumping about and yelling that she had permission. She was also distraught over her dog. The appellant rolled down the window of her car and seeing the officer by her door explained to her that she was trying to recover her dog from the objects stacked under her carport stall and intended to move her car over and behind that part of the carport for light (page 6 lines 8-17, page 13 lines 11-21). According to Deputy Barnes "she wasn't sure how it [the appellants explanation] had anything to do with what was going on" (page 13 lines 11-21), so she again ordered the appellant to exit the car, opened the door to the appellants car and smelled the odor of alcohol, and extricated the appellant from her car, placed her on the ground and in handcuffs. Because the appellant, prone on the ground, struggled having her hands removed from under her body, Deputy Crawford assisted Deputy Barnes in turning the appellant over and position her hands up behind her back to put her in to handcuffs and place the appellant in to custody (page 6 lines 20-25, page 7 lines 3-4).

After placing the appellant on the ground and in custody Deputy Barnes then spoke to the complainant by her door. She spoke only to the complainant and not to the landlord standing nearby who had arrived after being summoned (page 7 lines 18-25, page 22 line 25) Deputy Barnes observed some chairs and a table turned on the side and was directed by the complainant to the opposite side of the complainants vehicle parked under the

carport, were she alleged the appellant had damaged her automobile in throwing furniture (page 25 lines 17-20). Deputy Barnes observed a broken antenna and a scratch on the front fender of the complainant's vehicle (page 8 lines 9-12).

Deputy Barnes provides no specific facts as to the type of furniture she observed, the location of the furniture, or whether the furniture appeared to be damaged. Deputy Barnes instead asserts that she placed the appellant in to custody because "she was refusing to cooperate with [her] request to exit the vehicle on her own power." (page 22 lines 14-17).

SUMMARY OF THE ARGUMENT

Deputy Barnes took the appellant into custody not because she was performing her duty, but instead because she entirely neglected her duty to first investigate before taking any action. Deputy Barnes proceeded on presumptions as opposed to reasonable suspicion or probable cause. From the outset Deputy Barnes lacked specific facts and proceeded only on the complainants allegations. She had not observed the appellant in order to form a reasonable belief the appellant was impaired or impaired to a degree that rendered her incapable to safely operate her car. In addition the appellant was in the back parking area of a private property not open to the general public and not located near the entry to the public street, and she resided on that property.

Deputy Barnes had no statutory authority and probable cause to take the appellant into custody. She disregarded very relevant facts forming the totality of the circumstances and did not possess the basic imperatives of concrete facts the appellant either presented a danger to herself or anyone on the property or that the appellant committed a public offense. The requirement of probable cause is a prerequisite under the Fourth Amendment and a constitutional right the appellant was entitled to rely upon.

Deputy Barnes acted outside the scope of her authority as provided under the laws of the State of Utah and the appellant was convicted by means that offend the Due Process Clause.

ARGUMENT

POINT I

The instruction to the jury on the charge of interference with arresting officer under Section 76-8-305 was tantamount to a directed guilty verdict and the jury's verdict was not responsive to the issues joined in the information.

Utah Code Ann. Section 76-8-305 as enacted in 1953 originally made it an offense to intentionally interfere with a person recognized to be a law enforcement official seeking to effect an arrest or detention whether there was a legal basis for the arrest. In 1975 the

Court in State v. Bradshaw, 541 P.2d 800, invalidated the Statute on constitutional grounds on the basis that the language of the Statute failed to inform an ordinary citizen as to the conduct sought to be proscribed.

The Legislature in 1981 repealed and reenacted the statute to specify interference in a "lawful arrest and detention by use of force or the use of any weapon". In 1990 the Legislature amended the Statute and expanded the proscribed conduct to include lawful orders. The Statute states:

76-8-305. Interference with arresting officer.

A person is guilty of a class B misdemeanor if he has knowledge, or by the exercise of reasonable care should have knowledge, that a peace officer is seeking to effect a lawful arrest or detention of that person or another and interferes with the arrest or detention by:

(1) use of force or any weapon;

(2) the arrested person's refusal to perform any act required by lawful order:

(a) necessary to effect the arrest or detention; and

(b) made by a peace officer involved in the arrest or detention; or

(3) the arrested person's or another person's refusal to refrain from performing any act that would impede the arrest or detention.

The State charged the appellant in the information with violating the Section in that "she did have knowledge or by the exercise of reasonable care should have had knowledge that a peace officer was seeking to effect a lawful arrest or detention of the defendant…., and did interfere with said arrest or detention by use of force or by use of any weapon". Although the charge involved several questions of law, the trial judge provided the jury with only a mere abstract of the Act as opposed to declaring the principles of relevant laws applicable to the facts brought out in the evidence. Because the jury found the appellant not guilty of the remaining charges joined in the information, it required the jury then to consider whether the action of the arresting officer was lawful in its inception. Instead the instructions to the jury eliminated entirely the material constituents of the elements the jury needed to find necessary for conviction and egregiously broadened the basis for conviction to include subsections (2) and (3). While the trial judge did not direct a guilty verdict in form, the jury instructions had the functional equivalent of a directed verdict.

Compounding the jury's misconception of the issues was the prosecution depicting the case compatible to a domestic dispute generally well known among the population as a violent and dangerous situation (transcript page 20 lines 8-10) and the officer's action as basic and proper police conduct in retaining a person for investigative purposes. The law,

however, put the officer and the prosecutor on notice that the conduct was clearly unauthorized and unlawful.

In Sibren v. New York, 392 U.S. 40, 52-53 (1968) the Supreme Court held "Many deep and abiding Constitutional problems are encountered primarily at a level of low visibility in the criminal process- in the context of prosecutions for minor offenses which carry only short sentences."

The constitutional guarantee to due process and trial by jury requires that a defendant be afforded the full protection of a jury, unfettered, and unimpeded in its decision either directly or indirectly. In Sandstom v. Montana, 442 U.S. 510, 524 (1979) the High Court unanimously condemned jury instructions having the substantive effect of a directed verdict, and held the error of constitutional magnitude.

In United States v. Hayward, 420 F. 2d 142, 144 (DC. Cir. 1969) the Court of Appeals for the District of Columbia held that "the rule against directed verdicts of guilt includes perforce situations in which the judges instructions fall short of directing a guilty verdict but which nevertheless have the effect of so doing by eliminating other relevant considerations if the jury finds one fact to be true."

While based on federal rules of criminal procedures, the Supreme Court in Bollenbach v. United States, 326 U.S. 607, 614 (1946) ruled that the question is whether guilt has been found by a jury according to the procedure and standards approved for criminal trials and that the "[d]ischarge of the jury's responsibility for drawing appropriate conclusions from the testimony depends on the discharge of the judge's responsibility to give the jury the required guidance by a lucid statement of the relevant legal criteria."

The Utah Legislature basically adopted the federal rules of criminal procedures and pursuant to Utah law the trial judge has the duty to instruct the jury on the law applicable to the facts of the case, UCA Section 78-21-3. An information instruction is not a substitute for an element instruction. The Jury must be instructed with respect to all elements that it must find to convict of the crime charged, and the absence of such instruction is reversible error as a matter of law, State v. Jones, 823 P. 2d 1059 (Utah 1991), citing State v. Laine, 618 P.2d 33 (Utah 1980).

The prosecutorial misconduct and the jury instructions were so fundamentally unfair as to deny the appellant the constitutional right to due process and resulted in a miscarriage of justice.

In failing to object to the extensive arbitrary conduct, appellants counsel was ineffective and made serious errors thereby not functioning as the counsel guaranteed the appellant by the Sixth Amendment to the Constitution, See Strickland v. Washington, 466 U.S. 668 (1984) and State v. Gallegoes, 967 P.2d 973, 976 (Utah Ct. App. 1998).

POINT II

The State did not prove the elements of the offense as charged in the information

It is well established that the State must prove every element of a crime to convict an accused defendant, including the specific mens rea embodied in the Statute, UCA Section 76-1-501 (1) (1995), See State v. Stringham, 957 P.2d 602, 608 (Utah App. 1998), State v. Pearson, 985 P.2d 919, 922 (Utah App. 1999). It is, likewise, well established that the evidence must prove that it was committed in the manner charged in the information, State v. Hyams, 230 P. 349, 350 (Utah 1924).

The State did not prove (**A**) the appellant had knowledge the officer was seeking to effect a lawful detention or arrest; (**B**) the detention or arrest was lawful in that the officer acted under the authority of state law or within the scope of her authority; and (**C**) the appellant interfered in the detention or arrest by the use of force or the use of any weapon.

A. The appellant did not have knowledge the officer was seeking to effect a lawful detention or arrest

Whether a person has knowledge or by the exercise of reasonable care should have knowledge that a peace officer is seeking to effect a lawful arrest or detention depends in the first instance whether the officer is seeking to arrest "that person or another person." Only as to the later can the term "by exercise of reasonable care" be applied. Whether a person has knowledge a peace officer is seeking to arrest him or her depends on the objective circumstances and not on the subjective view harbored by the officer, See Berkemer v. Mc Carty, 468 U.S. 420 (1984), State v. Ramirez, 817 P.2d 774, 786 (Utah 1991).

Utah law requires that the person making the arrest shall inform the person being arrested of his or her intention, cause, and authority to arrest him or her except when the person is arrested during the commission of a crime or under exigent circumstances, UCA Section 77-7-6. The appellant was not detained in an isolated area or an area where she was unknown and could have fled to avoid detention. Instead, the appellant was outside her residence and immediately and voluntarily dispelled any question that she intended to leave the property.

The State did not show prove exigent circumstances existed that prevented the arresting officer from informing the appellant of her intention to detain or arrest the appellant and the cause for her detention or arrest. The evidence instead shows the appellant was entirely unaware of the complainants allegations she had breached the peace and willfully damaged her property.

The State did not prove the statutory element knowledge of a lawful detention or arrest or the specific and relevant mens rea embodied in the Statute.

B. Appellants detention under the condition of arrest or arrest was not authorized by State Law; the arresting officer acted outside the scope of her authority and violated appellants constitutional protected rights under Article I Section 14 of the State Constitution and the Fourteenth Amendment to the United States Constitution.

In interpreting Statutes Utah Courts and the U.S. Supreme Court look to the plain language of the Statute and presume that each word in the Statute was used advisedly, and will give effect to each term in the Statute according to its ordinary and accepted meaning, See State v. Barrett, 127 P.3d 682 (Utah 2005), Arthur Anderson LLP. v. United States, 544 U.S. 696 (2005).

In Connecticut Nat. Bank v. Germain, 503 U.S. 249 (1992) the Supreme Court held that "cannons of construction are no more than rules of thumb that help courts determine the meaning of legislation, and in interpreting a statute a court should always turn first to one, cardinal canon before all others." The Court emphasized "courts must presume that the legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then the first canon is also the last: judicial inquiry is complete."

As of the reenactment of UCA Section 76-8-305, subsequent to the Bradshaw decision, the conduct proscribed in the Statute is specific and in harmony with the Federal and State Constitution.

According to the plain language of the Statute it is not a crime to reasonable and non-violently resist ones unlawful detention or arrest.

Whether a detention or arrest is lawful depends first and foremost on whether the officer is acting under authority of State Law. Pursuant to Utah law a peace officer may stop any person in a public place when he has reasonable suspicion to believe he has committed or is in the act of committing or is attempting to commit a public offense, and may demand his name, address and an explanation of his action, UCA 77-7-15. The section

contemplates that an officer may complete a non-consensual investigative stop and stay within the boundaries drawn by the constitution if the officer is able to point to objective, specific and articulable facts that warrant the intrusion upon that person, State v. Contrel, 886 P. 2d 107 (Utah Ct. App.1994), cert denied, 899 P.2d 1231 (1995). Deputy Barnes had not observed the appellant commit any public offense when she approached the appellant and ordered her out of the car and she possessed no objective and specific facts the appellant committed any offense. Although Deputy Barnes subsequently detected the odor of alcohol, the sole fact that an individual has consumed alcohol does not give rise to a violation under UCA Section 76-9-701(1). The Section is aimed at particular conduct rather than the condition of intoxication. While the appellant intended to move her car after consuming alcohol, the appellant was on private property not open to the general public and there was no indication the appellant intended to leave the property or was not in control of her car.

From the inception Deputy Barnes relied entirely on the accusations of the complainant. The allegations that the appellant unreasonable disturbed the peace and willfully damaged property then attempted to flee emanated entirely from the complainant and Deputy Barnes never questioned the veracity of the complainant's allegations. When asked whether she was under the impression the appellant was throwing the complainants furniture, Deputy Barnes responded: "I wasn't under the impression, I was informed by

dispatch with the complainant on the line with dispatch saying she was throwing furniture," (transcript page 12 lines 4-8). Deputy Barnes testimony shows she considered the complainant's allegations facts before she even arrived on the scene.

An arrest is lawful if it is authorized by statute and supported by probable cause, State v. Harman, 910 P.2d 1196, 1199-1204 (Utah 1995).

Deputy Barnes testified she placed the appellant into custody in order to investigate the complaint and because the appellant did not exit her car on her own volition. Taking a person in to custody is an arrest. Warrant-less arrests in Utah are authorized only in limited circumstances and require probable cause, UCA Section 77-7-2. Probable cause must be based on either the personal observations of the officer and while committed in the presence of the officer or based on reasonable trustworthy information and articulable, concrete, and objective facts as opposed to subjective presumptions.

In State v.White, 586 P.2d 656 (Utah App. 1993) officers relied on information provided by the defendant's former spouse. The Court implicitly held the officers had no experience with the defendant's former spouse which would allow them to assume the accuracy of the information supplied. The Court concluded that the actions of the officers were based "upon unreliable and unverified allegations that were not substantiated by

articulable specific facts from which the officers could infer a reasonable possibility of criminal activity, id at 666. The Court in State v. Valenzuela, 37 P. 3d 260 (Utah App.2001) likewise held that in relying on third party information alone "a reasonable and prudent person . . . would not be justified in believing the suspect committed the offense." The Court further emphasized, that

> "absent a risk to public safety the Court expects police officers to make significant independent corroperative efforts to confirm the information," id at 263.

Asking questions is an essential part of police investigations. While Deputy Barnes characterized her interference in the appellant's liberty as investigative detention, she never posed a single question to the appellant even after she placed her in handcuffs, and she also did not question the landlord as a potential witness. Deputy Barnes testimony while inconsistent demonstrates she subsequently made no reasonable inquiry of a truly investigative nature and relied instead on superficial observations. In addition, the totality of the circumstances did not bear the indicia of reliability of the allegations,

- The complainant was not verbally abusive, aggressive, or tumultuous in the officer's presence, and no other person in the vicinity had made a complaint of a disturbance of the peace.
- The complainant never left the area of her front door but directed Deputy Barnes to damages on her vehicle parked under the carport with the passenger side facing the

appellants carport stall and accordingly on the side of the vehicle not in her field of vision.

- Furniture having been thrown would cause indentations to the body of the vehicle as opposed to a scratch.

The complainant in the instant case was not a third party impartial informant. Alleged victims accusations alone can not form a basis for a warrant-less arrest. A federal case on point is Arpin v. Santa Clara Valley Transp. Agency, 261 F. 3d 912 (9th Cir. 2001) where it was proclaimed the alleged victim made a false criminal report to provide the means whereby the police would take the plaintiff in the case in to custody. The Court held,

> "In establishing probable cause officers may not solely rely on the claim of a citizen witness that he was a victim of a crime, but must independently investigate the basis of the witnesses knowledge or interview other witnesses," id at 925.

Deputy Barnes had understood the appellant was concerned about her dog and attempted to retrieve her dog from under her carport, she testified, however, that she "wasn't sure how it had anything to do with what was going on" (testimony page 13 line 19). When an officer literally has no idea what is going on and whether a citizen has violated the law, both the State and Federal Constitution commands that the officer either let the individual be or conduct first a proper investigation. An officer may deprive a person of liberty when, and only when, the officer has a viable claim that the individual has committed a

crime. Deputy Barnes did not satisfy that fundamental imperative. Without concrete and verified facts Deputy Barnes lacked probable cause.

"The right to be free of unreasonable seizures is one of the most cherished rights guaranteed by the Utah and United States Constitution," Brigham City v. Stuart, 122 P. 3d 506, 511 (Utah 2005).

The Fourth Amendment and Article I Section 14 of the Utah Constitution taken verbatim from the U.S. Constitution provide in pertinent part:

> **"The right of the people . . . to be secure in their person . . . against unreasonable seizures shall not be violated . . . but upon probable cause"[.]**

Probable cause applies whether the intrusion upon personal security are termed arrests or investigatory detentions, Davis v. Mississippi, 394 U.S. 721, 726 -727 (1969). The initial interference must be based on specific objective facts establishing reasonable suspicion to believe the suspect is involved in criminal activity, Brown v. Texas, 443 U.S. 47 (1979), and an investigative detention must be brief, unintrusive and can not approach the condition of arrest, See Dunway v. New York, 442 U.S. 200, 212 (1979).

Although the Supreme Court in Terry v. Ohio, 392 U.S. 1 (1968) recognized an exception to the probable cause requirement, the Court confined its exclusions to brief stops and the frisk for weapons in situations in which the officer acted on his own observations of suspicious conduct and on reliable information that the suspect was armed and dangerous.

While officer safety was a concern in Terry, "the decision did not create a broad or general officer safety exception to the requirements of the Fourth Amendment," State v. Valdez, 68 P.3d 1052, 1056 (Utah App. 2003). The Court in Brown supra emphasized that 'absent a factual basis for detaining the person, the risk of arbitrary and abusive police practices is to great," id at 51-52.

Deputy Barnes testimony reveals that while she did not communicate that fact, she immediately decided to place the appellant in to custody based on the mere allegations of the complainant and the reason to order the appellant immediately out of her car. Pursuant to Utah Law and the rules promulgated by Utah Appellate Courts and the United States Supreme Court, however, Deputy Barnes authority was limited to conducting a brief inquiry in to suspicious circumstances and any further detention required consent or probable cause.

Deputy Barnes lacked probable cause and lawful authority and the detention and arrest of the appellant was unlawful.

In United States v. Di Re, 332 U.S. 581 (1948) it was at issue whether officers possessed the required probable cause to arrest the defendant. The prosecutor on trial and on appeal argued that the defendant's failure to protest the arrest could be used to create probable

cause on the theory that an innocent man would have objected to, or resisted his arrest. Although the Supreme Court decided the case on other grounds, it did reach the issue of resisting arrest on dicta, stating "One has an undoubted right to resist an unlawful arrest and Courts will uphold the right of resistance in proper cases," id at 594. Unquestionable, innocent people would generally react strongly to police action that is not based on a reasonable investigation.

C. The appellant did not interfere in the detention or arrest by use of force, and the facts do not support the conclusion that she did.

The American Heritage Dictionary of the English Language p. 686 (4th ed. 2000) defines force as the use of physical power or violence. Websters Third New International Dictionary p. 887 (1986) defines force as strength or energy of an exceptional degree and also as to do violence. Blacks Law Dictionary p. 673 (8th ed. 2004) defines force as power, violence, or pressure directed against a person or thing. The common denominator of those definitions is the use of strength applied to ones action, or violence. The word is generally understood as an aggressive act. A non-passive act is therefore only an act of force if there is power or strength of an exceptional degree directed at a person.

Although Deputy Barnes testified the appellant kicked, the problem with Deputy Barnes testimony is that while her action did not comport to the circumstances, she articulates the circumstances to comport to her actions. The appellant after having been thrown to the ground in a prone position could not kick in the direction of the Deputies. Instead, the appellant instinctively reacted to the unexplained, unexpected, and excessive force employed by Deputy Barnes. A reasonable evaluation of Deputy Barnes testimony shows instead that the appellant protested and struggled for balance due to her prone position and struggled with having her arms painfully forced up behind her back.

There was no strength, power, or violence directed at the Deputies, there was no force exerted by the appellant herself as force is defined.

CONCLUSION

Because Deputy Barnes acted outside the scope of her authority and because the conviction was obtained by methods that offend the Due Process Clause, the conviction of the appellant necessitates for the verdict to be overturned.

Wherefore the appellant respectfully request that this Honorable Court reverse the judgment of the lower court for an entry of acquittal.

ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

This case presents important issues regarding the District Courts interpretation of UCA Section 76-8-305 pertaining to interference with a peace officer, and jury instructions having the effect of a directed guilty verdict.

Respectfully submitted this 13th day of November 2006.

Maria J Jacobs

Maria Joyce Jacobs

Appellant pro se

ADDENDUM

In The Third Judicial District Court Of Salt Lake County
State of Utah

THE STATE OF UTAH, Plaintiff, vs. MARIA JOYCE JACOBS, Defendant,	**JURY INSTRUCTIONS** Case No. 041907003

You are instructed that the defendant, MARIA JOYCE JACOBS, is charged by the Information which has been duly filed with the commission of CRIMINAL MISCHIEF; INTERFERENCE WITH A PEACE OFFICER MAKING AN ARREST; DISORDERLY CONDUCT; and INTOXICATION. The Information alleges:

COUNT I

CRIMINAL MISCHIEF, a Class A Misdemeanor, at 1028 Riches Avenue, in Salt Lake County, State of Utah, on or about October 21, 2004, in violation of Title 76, Chapter 6, Section 106, Utah Code Annotated 1953, as amended, in that the defendant, MARIA JOYCE JACOBS, a party to the offense, intentionally damaged, defaced, or destroyed the property of Nancy Garner, causing a pecuniary loss to Nancy Garner equal to or in excess of $300, but less than $1,000 in value.

COUNT II

INTERFERENCE WITH A PEACE OFFICER MAKING AN ARREST, a Class B Misdemeanor, at 1028 Riches Avenue, in Salt Lake County, State of Utah, on or about October 21, 2004, in violation of Title 76, Chapter 8, Section 305, Utah Code Annotated 1953, as amended, in that the defendant, MARIA JOYCE JACOBS, a party to the offense, did have knowledge or by the exercise of reasonable care, should have had knowledge, that a peace officer was seeking to effect a lawful arrest or detention of the defendant or another, and did interfere with said arrest or detention by use of force or by use of any weapon.

COUNT III

DISORDERLY CONDUCT, a Class C Misdemeanor, at 1028 Riches Avenue, in Salt Lake County, State of Utah, on or about October 21, 2004, in violation of Title 76, Chapter 9, Section 102(1)(b)(i), Utah Code Annotated 1953, as amended, in that the defendant, MARIA JOYCE JACOBS, a party to the offense, intending to cause public inconvenience, annoyance or alarm, or recklessly created a risk thereof, after a request by another to desist, engaged in fighting or in violent, tumultuous or threatening behavior.

COUNT IV

INTOXICATION, a Class C Misdemeanor, at 1028 Riches Avenue, in Salt Lake County, State of Utah, on or about October 21, 2004, in violation of Title 76, Chapter 9, Section 701(1), Utah Code Annotated 1953, as amended, in that the defendant, MARIA JOYCE JACOBS, a party to the offense, was under the influence of alcohol, a controlled substance, or any substance having the property of releasing toxic vapors, to a degree that the defendant may have endangered herself or another, in a public place or in a private place where the defendant unreasonably disturbed other persons.

3RD DISTRICT COURT - SALT LAKE COURT
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff,	:	MINUTES SENTENCE, JUDGMENT, COMMITMENT
vs.	:	Case No: 041907003 MO
MARIA JOYCE JACOBS, Defendant.	:	Judge: STEPHEN L HENRIOD Date: June 26, 2006

PRESENT
Clerk: lynm
Prosecutor: BROWN, TIFFANY M
Defendant
Defendant's Attorney(s): SEAMAN, CHRISTINE M

DEFENDANT INFORMATION
Date of birth: December 14, 1946
Audio
Tape Number: 41 Tape Count: 1044

CHARGES

2. INTERFERING W/ LEGAL ARREST - Class B Misdemeanor
Plea: Not Guilty - Disposition: 03/14/2006 Guilty

SENTENCE JAIL

Based on the defendant's conviction of INTERFERING W/ LEGAL ARREST a Class B Misdemeanor, the defendant is sentenced to a term of 180 day(s) The total time suspended for this charge is 170 day(s).

Attorney Fees Amount: $500.00 Plus Interest
Pay in behalf of: LEGAL DEFENDER ASSOCIATION

Case No: 041907003
Date: Jun 26, 2006

ORDER OF PROBATION

The defendant is placed on probation for 12 month(s).
Probation is to be supervised by Salt Lake Co Probation Service.
Defendant to serve 10 day(s) jail.

PROBATION CONDITIONS

Violate no laws.
The defendant to enter into and complete the Cognitive Restructuring classes approved by the Court or Probation Officer.
The defendant is to serve 10 days jail forthwith.
The defendant is to pay fine of $750 and recoupment of $500 at the rate of $150 a month beginni.ng 30 days after release.
The defendant is not to drink or possess alcohol or be present when alcohol is present or being consumed.
The defendant is to be evaluated and complete any alcohol abuse treatment recommended.

Dated this ____ day of _____, 20____.

_____
STEPHEN L HENRIOD
District Court Judge

STATUTORY DEFINITION OF Interference with Arresting Officer
INSTRUCTION NO. 35

A person commits Interference With Arresting Officer if she has knowledge, or by the exercise of reasonable care should have knowledge, that a peace officer is seeking to effect a lawful arrest or detention of that person and interferes with the arrest or detention by:

(1) the use of force or any weapon;

(2) the arrested person's refusal to perform any act required by lawful order: (a) necessary to effect the arrest or detention; and (b) made by a peace officer involved in the arrest or detention; or,

(3)the arrested person's refusal to refrain from performing any act that would impede the arrest or detention.

ELEMENTS OF Interference with Arresting Officer
INSTRUCTION NO 36

Before you can convict the defendant, Maria Joyce Jacobs, of the crime of Interference With Arresting Officer, as charged in count II of the Information, you must find from the evidence, beyond a reasonable doubt, all of the following elements of that crime:

1. That on or about the 21st day of October, 2004, in Salt Lake County, State of Utah, the defendant, Maria Joyce Jacobs, as a party to the offense, had knowledge, or by the exercise of reasonable care should have had knowledge, that a peace officer is seeking to effect a lawful arrest or detention of her; and

2. That Maria Joyce Jacobs did interfere with the arrest or detention by use of force or any weapon;

or

3. That Maria Joyce Jacobs did refuse to perform any act required by lawful order necessary to effect the arrest or detention and made by a peace officer involved in the arrest or detention;

or

4. That Maria Joyce Jacobs refused to refrain from performing any act that would impede her arrest or detention.

If, after careful consideration of all of the evidence in this case, you are convinced of the truth of each and every one of the foregoing elements beyond a reasonable doubt, then you must find the defendant guilty of Interference With Arresting Officer as charged in count II of the information. If, on the other hand, you are not convinced beyond a reasonable doubt of any one or more of the foregoing elements, then you must find the defendant not guilty of count II.

DEFINITIONS

INSTRUCTION NO. 42

Annoyance is defined as a condition or situation that interferes with the use or enjoyment of property.

Desist is defined as to stop or leave off.

A person engages in conduct Intentionally, or with intent or willfully with respect to the nature of her conduct or to a result of her conduct, when it is her conscious objective or desire to engage in the conduct or cause the result.

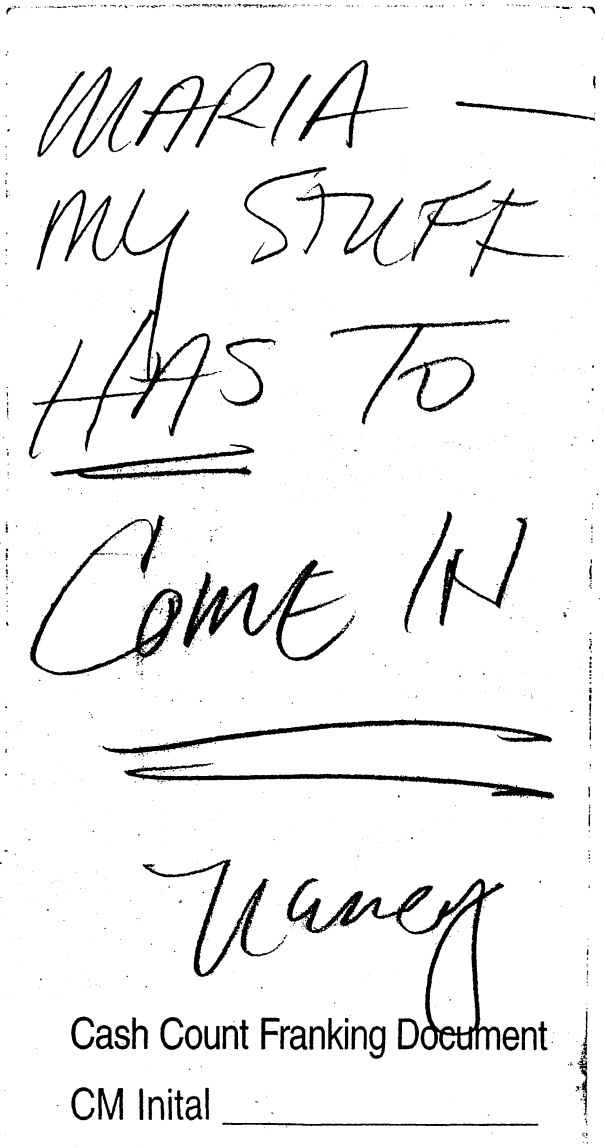
A person engages in conduct Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when she is aware of the nature of her conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that her conduct is reasonably certain to cause the result.

A person engages in conduct Recklessly with respect to circumstances surrounding her conduct or the result of her conduct when she is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Tumultuous is defined as tumult, a violent agitation of mind or feelings, a violent outburst.

Violent is defined as (1) strong physical force, or (2) passionately threatening.

Note posted by Garner on my front door the night of October 20, 2004.



Black's Law Dictionary

force, *n.* Power, violence, or pressure directed against a person or thing.

actual force. Force consisting in a physical act, esp. a violent act directed against a robbery victim. — Also termed *physical force.* [Cases: Robbery ⇐6. C.J.S. *Robbery* §§ 13–23.]

constructive force. Threats and intimidation to gain control or prevent resistance; esp., threatening words or gestures directed against a robbery victim. [Cases: Robbery ⇐6. C.J.S. *Robbery* §§ 13–23.]

deadly force. Violent action known to create a substantial risk of causing death or serious bodily harm. • A person may use deadly force in self-defense only if retaliating against another's deadly force. — Also termed *extreme force.* Cf. *nondeadly force.*

> "Under the common law the use of deadly force is never permitted for the sole purpose of stopping one fleeing from arrest on a misdemeanor charge . . . ." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 1098 (3d ed. 1982).

excessive force. Unreasonable or unnecessary force under the circumstances.

extreme force. See *deadly force.*

independent force. Force not stimulated by a situation created by the actor's conduct.

intervening force. Force that actively produces harm to another after the actor's negligent act or omission has been committed.

irresistible force. Force that cannot be foreseen or controlled, esp. that which prevents the performance of a contractual obligation; FORCE MAJEURE. [Cases: Contracts ⇐309(1). C.J.S. *Contracts* §§ 520–522, 524.]

The American Heritage Dictionary of the English Language

force (fôrs, fōrs) *n.* **1.** The capacity to do work or cause physical change; energy, strength, or active power: *the force of an explosion.* **2.a.** Power made operative against resistance; exertion: *use force in driving a nail.* **b.** The use of physical power or violence to compel or restrain: *a confession obtained by force.* **3.a.** Intellectual power or vigor, especially as conveyed in writing or speech. **b.** Moral strength. **c.** A capacity for affecting the mind or behavior; efficacy: *the force of logical argumentation.* **d.** One that possesses such capacity: *the forces of evil.* **4.a.** A body of persons or other resources organized or available for a certain purpose: *a large labor force.* **b.** A person or group capable of influential action: *a retired senator who is still a force in national politics.* **5.a.** Military strength. **b.** The entire military strength, as of a nation. **c.** Units of a nation's military personnel, especially those deployed into combat: *Our forces have at last engaged the enemy.* **6.** *Law.* Legal validity. **7.** *Physics.* A vector quantity that tends to produce an acceleration of a body in the direction of its application. **—force** *tr.v.* **forced, forc·ing, forc·es. 1.** To compel through pressure or necessity: *I forced myself to practice daily. He was forced to take a second job.* **2.a.** To gain by the use of force or coercion: *force a confession.* **b.** To move or effect against resistance or inertia: *forced my foot into the shoe.* **c.** To inflict or impose relentlessly: *He forced his ideas upon the group.* **3.a.** To put undue strain on: *She forced her voice despite being hoarse.* **b.** To increase or accelerate (a pace, for example) to the

Webster's Third New International Dictionary

¹force \'fō(ə)rs, 'fȯ(ə)rs, 'fōəs, 'fȯ(ə)s\ *n* -S *often attrib* [ME, fr. MF *force,* fr. (assumed) VL *fortia,* fr. L *fortis* strong + *-ia* -y — more at FORT] **1 a :** strength or energy esp. of an exceptional degree **:** active power **:** VIGOR **b :** physical strength or vigor of a living being ⟨drained of all ~ by his mighty effort⟩ **c :** power to affect in physical relations or conditions ⟨the ~ of the blow was somewhat spent when it reached him⟩ ⟨the rising ~ of the wind⟩ **d :** moral or mental strength esp. when manifested as power of effective action (as in the overcoming of opposition) ⟨the ~ of his character had the impact of a physical pressure⟩ ⟨a man of great ~ and determination⟩ **e :** power or capacity to sway, convince, or impose obligation **:** VALIDITY, EFFECT ⟨the ~ of his arguments⟩ ⟨who could resist the ~ of such an appeal⟩; *often* **:** legal efficacy **:** operative effect ⟨that law is still in ~⟩ ⟨an agreement having the ~ of law⟩ **2 a :** might or greatness esp. of a prince or state; *often* **:** strength in or capacity for waging war ⟨the ~ of this lord was so great that no other would contest his right to rule⟩ **b (1) :** a group of individuals occupied with or ready for combat ⟨the entire ~ of the fortress⟩; *usu* **:** a body of troops, ships, airplanes, or combinations thereof esp. when assigned to a particular military purpose or necessity ⟨took a small ~ of infantrymen and searched the village⟩ ⟨the enemy assembled a great ~ for the spring offensive⟩ — see TASK FORCE (2) **forces** *pl* **:** the whole military strength (as of a nation) **:** ARMED FORCES **c :** a body of persons available for or serving a particular end ⟨a large available labor ~⟩; *often* **:** a more or less organized group or staff having a common responsibility or task ⟨a conscientious police ~⟩ ⟨the plantation ~ took a half-holiday⟩ **3 a :** power, violence, compulsion, or constraint exerted upon or against a person or thing ⟨conciliation may succeed where ~ completely fails⟩ ⟨those who will not respond to kindness must yield to ~⟩ **b :** strength or power of any degree that is exercised without justification or contrary to law upon a person or thing **c :** violence or such threat or display of physical aggression toward a person as reasonably inspires fear of pain, bodily harm, or death **4** *dial Eng* **:** a large part, quantity, or number **5 :** an agency or influence (as a push or pull) that if applied to a free body results chiefly in an acceleration of the body and sometimes in elastic deformation and other effects (as from overcoming cohesion or adhesion or sustaining weight) **6 :** the quality of conveying impressions intensely in writing or speech (as by vividness, cogency, or passion) ⟨a stimulating essay marked by ~ and cogency⟩ **7 :** an act (as of misdirection) or course (as of play) that forces the response of another (as in a play in a game) into a predetermined pattern ⟨sometimes a ~ is useful for locating honors in the opponents' hands⟩ **8 a :** the upper hollow embossing die **:** ˢCOUNTER 10b **b :** a specially formed bar or plate attached to the underside of the slide of a punch press chiefly for use in riveting and seaming **9 :** a billiards stroke made by striking a cue ball hard and just below the center so that it rebounds or stops sharply or goes off at a desired angle after striking the object ball

syn VIOLENCE, COMPULSION, COERCION, DURESS, CONSTRAINT,

78-21-3. Court to decide questions of law.

All questions of law, including the admissibility of evidence, the facts preliminary to such admission, the construction of statutes and other writings, and the application of the rules of evidence are to be decided by the court and all discussions of law addressed to it. Whenever the knowledge of the court is by law made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it.

77-7-15. Authority of peace officer to stop and question suspect — Grounds.

A peace officer may stop any person in a public place when he has a reasonable suspicion to believe he has committed or is in the act of committing or is attempting to commit a public offense and may demand his name, address and an explanation of his actions.

77-7-2. Arrest by peace officers.

A peace officer may make an arrest under authority of a warrant or may, without warrant, arrest a person:

(1) for any public offense committed or attempted in the presence of any peace officer; "presence" includes all of the physical senses or any device that enhances the acuity, sensitivity, or range of any physical sense, or records the observations of any of the physical senses;

(2) when he has reasonable cause to believe a felony or a class A misdemeanor has been committed and has reasonable cause to believe that the person arrested has committed it;

(3) when he has reasonable cause to believe the person has committed a public offense, and there is reasonable cause for believing the person may:

(a) flee or conceal himself to avoid arrest;

(b) destroy or conceal evidence of the commission of the offense; or

(c) injure another person or damage property belonging to another person.

77-7-7. Force in making arrest.

If a person is being arrested and flees or forcibly resists after being informed of the intention to make the arrest, the person arresting may use reasonable force to effect the arrest. Deadly force may be used only as provided in Section 76-2-404.

76-9-701. Intoxication — Release of arrested person or placement in detoxification center.

(1) A person is guilty of intoxication if he is under the influence of alcohol, a controlled substance, or any substance having the property of releasing toxic vapors, to a degree that the person may endanger himself or another, in a public place or in a private place where he unreasonably disturbs other persons.

77-7-6. Manner of making arrest.

(1) The person making the arrest shall inform the person being arrested of his intention, cause, and authority to arrest him. Such notice shall not be required when:

(a) there is reason to believe the notice will endanger the life or safety of the officer or another person or will likely enable the party being arrested to escape;

(b) the person being arrested is actually engaged in the commission of, or an attempt to commit, an offense; or

(c) the person being arrested is pursued immediately after the commission of an offense or an escape.

(2) (a) If a hearing-impaired person, as defined in Subsection 78-24a-1(2), is arrested for an alleged violation of a criminal law, including a local ordinance, the arresting officer shall assess the communicative abilities of the hearing-impaired person and conduct this notification, and any further notifications of rights, warnings, interrogations, or taking of statements, in a manner that accurately and effectively communicates with the hearing-impaired person including qualified interpreters, lip reading, pen and paper, typewriters, computers with print-out capability, and telecommunications devices for the deaf.

(b) Compliance with this subsection is a factor to be considered by any court when evaluating whether statements of a hearing-impaired person were made knowingly, voluntarily, and intelligently.

76-8-305. Interference with arresting officer.

A person is guilty of a class B misdemeanor if he has knowledge, or by the exercise of reasonable care should have knowledge, that a peace officer is seeking to effect a lawful arrest or detention of that person or another and interferes with the arrest or detention by:

(1) use of force or any weapon;

(2) the arrested person's refusal to perform any act required by lawful order:

(a) necessary to effect the arrest or detention; and

(b) made by a peace officer involved in the arrest or detention; or

(3) the arrested person's or another person's refusal to refrain from performing any act that would impede the arrest or detention.

History: C. 1953, 76-8-305, enacted by L. 1981, ch. 62, § 1; 1990, ch. 274, § 1.

Repeals and Reenactments. — Laws 1981, ch. 62, § 1 repealed former § 76-8-305, as enacted by § 76-8-305, relating to interference with law enforcement official seeking to detain interferor or another, and enacted present § 76-8-305.

dispatch call that said there was a civil dispute and disturbance, correct?

A Yes.

Q And in that call you were under the impression that Maria Jacobs was throwing her neighbor's property, correct?

A I wasn't under the impression, I was informed by dispatch with the complainant on the line with dispatch saying that she was throwing furniture.

Q And you were also told that she was extremely intoxicated, correct?

A I was told that there was a possible intoxication issue.

Q Okay. And then you arrived here and what is the first thing that you notice?

A The complainant standing at the doorway and some furniture tumbled around the she was indicating to the car, you need to stop her, she's drunk.

Q So Maria was in the car at this time?

A Yes, ma'am.

Q Okay. And you approached Ms. Jacobs and you testified that you instructed her to exit the car, correct?

A Yes, ma'am.

Q You didn't tell her she was being arrested, correct?

A She wasn't being arrested at that time. I was

investigating a disturbance.

Q Okay, so you didn't tell her that?

A No.

Q And you didn't tell her why you wanted her to get out of the car, did you?

A I don't recall what the exact words I said at that time.

Q Okay. There's nothing in the police report about you mentioning why she had to get out of the car, correct?

A I didn't specify that but...

Q Okay. And do you remember her saying at this time that her dog was missing?

A Like I said, I remember a tumult of statements being issued from her you know, regarding no, I didn't do anything wrong, I need to get my dog, I need to park my car, this kind of - but it was very jumbled.

Q You were aware that there was a concern she had about her dog then?

A I wasn't sure how it had anything to do with what was going on. So that's why I wanted to question her further.

Q Okay. And do you remember a man approaching at this time?

A I don't recall anybody else. I was pretty focused on what was going on.

Q You don't remember if a car was in there also?

A I don't remember.

Q Now, you didn't take pictures of what you witnessed on that car did you?

A No ma'am.

Q Okay. Officer, you didn't see Maria Jacobs throw any furniture on October 21 did you?

A No, ma'am.

MS. WELCH: I have no further questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. FERBRACHE:

Q You were in that area at around 2:30 a.m.; is that right?

A Yes, sir.

Q At 1028 Riches Avenue?

A Uh-huh (affirmative).

Q Salt Lake County?

A Uh-huh (affirmative).

Q And it was dark outside?

A Yes, it was 2:30 in the morning.

Q 2:30 in the morning. And you were dispatched on a civil dispute?

A Yes, ma'am - yes, sir.

Q That's fine. When you're dispatched on a civil

dispute, is there at times criminal activity?

A Is there, I'm sorry, what?

Q Do you anticipate that there may be or may not be criminal activity?

A It was dispatched as an active civil dispute. So I expected that there would be, you know, an ongoing active problem at that point.

Q And when you've been dispatched on domestic or civil disputes, have you had to conduct arrests or engage in detaining people for purpose of investigating the scene?

A If I find it necessary for my safety or the safety of the other people at the scene, yes.

Q So when you approached, you really hadn't seen any criminal conduct at that point; is that right?

A No, sir.

Q So your approaching and you observe somebody in a vehicle; is that right?

A Yes.

Q How often do you allow people to leave the scene of an investigation?

A Never.

Q And so what would you do when somebody is attempting to leave the scene of an investigation?

A I would attempt to detain them so that I can conduct my investigation.

Q And is that what you did this evening?

A Yes.

Q And how did you do that?

A I approached the vehicle and requested that she exit the vehicle and speak to me.

Q And what sort of tone or how did you conduct that?

A You know, initially I'm sure I wouldn't have yelled at her or been aggressive in that I really didn't know what was happening yet. I initially would approach the vehicle and request in a civil tone that somebody cooperate with my investigation.

Q And at the point you opened the vehicle door, what was the situation for you?

A I could see that the person I was engaging was very upset. I could smell the alcohol. I could see that she was very tense, that she was angry.

Q Was there an issue of safety?

A At that point, yes there was. I was concerned that she would engage the vehicle and try to move the vehicle because she kept screaming, "I need to get back to my parking spot."

Q Was there an issue of criminal activity?

A At that point I could see that there was a problem, you know, because the furniture had been turned over and the criminal activity at that point would have been being in or

about a vehicle with alcohol in your system.

Q So what was the proper steps that you would take in all situations?

A In any situation where I need to question someone whose being uncooperative, I will put them in custody for my safety and the safety of the person I'm questioning.

Q And is this your training or is this your own personal belief?

A This is my training.

Q And did you conduct that that evening, did you follow through with your training?

A Yes.

Q And how did you do that?

A I extricated Ms. Jacobs from the vehicle as she was refusing to cooperate with my request to exit the vehicle on her own power. So I extricated her from the vehicle and placed her in custody.

Q And you did that because?

A Because I was fearful for her safety and my safety, and the safety of all the other people on the scene.

Q Now there's a question as to the photographs and do you carry a camera with you?

A No sir, I do not.

Q Are you the person in charge of taking photographs?

A No sir, I'm not.

CERTIFICATE OF DELIVERY

I, MARIA JOYCE JACOBS, certify that I delivered eight copies of this brief to the Utah Court of Appeals, 450 South State, 5th Floor, Salt Lake City, Utah 84114-0230, and two copies to David E. Yokom, District Attorney for Salt Lake County, 111 East Broadway, Suite 400, Salt Lake City, Utah 84111.

Maria J Jacobs
MARIA J. JACOBS